Filed 8/20/13 In re C.D. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re C.D. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. K.D., Defendant and Appellant.	G048002 (Super. Ct. Nos. DP017602, DP023126, DP023127) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Deborah C. Servino, Judge. Affirmed.

Jacob I. Olson, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

* * *

The mother of three small children (mother) challenges an order denying her reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(13).[1] Even though mother acknowledges having an extensive substance abuse history, she contends the court abused its discretion in making its order because providing reunification services to her would be in the best interests of the children. We disagree. The record contains substantial evidence to support the finding by clear and convincing evidence that reunification services would not be the best interests of the children. The order is affirmed.

I

FACTS

A. Background:

Mother began drinking when she was about 28 years old. She would black out from alcohol. She began using "speed" and was hooked from the very first usage. Mother became homeless and was in and out of sober living homes and in and out of jail. Mother reported to the social worker that she graduated from a 90-day drug treatment program in 2007; nonetheless, she was "pretty much using daily."

Mother had at least 12 arrests or citations from July 1994 to December 2007. Four of those arose out of controlled substance violations, occurring from August 2005 to December 2007.

In 2008, mother gave birth to C.D., the first child she had with her husband (father). C.D. was detained shortly after birth because she tested positive for methamphetamine when born. Mother admitted having used methamphetamine on a regular basis while pregnant, even though she knew that doing so could negatively impact the unborn child. Father also had an extensive history of substance abuse, and admitted

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[1] All subsequent statutory references are to the Welfare and Institutions Code unless otherwise specifically stated.

having used methamphetamine for about 15 years. He, too, had a criminal record. Mother and father received reunification services from October 2008 to January 2010, followed by family maintenance services until June 2010, when the case was closed.

B. Current Dependency Proceedings:

(1) Detention and section 300, subdivisions (b) and (j) ruling—

Mother and father had three children together, who were ages four years (C.D.), three years (K.D.), and two months (D.D.) at the time they were taken into protective custody on October 10, 2012. It was alleged that both mother and father used methamphetamine in the presence of the children and that mother used methamphetamine despite the fact that she was breastfeeding both K.D. and D.D. It was also alleged that there was violence between the parents, including an incident in August 2012 when mother threw a lamp at father, who suffered a deep laceration in his cheek that required stitches.

On October 15, 2012, the court ordered all three children detained.

In an interview with the social worker on October 30, mother admitted that between October 10 and October 20 she and father had relapsed on methamphetamine, having used it about every other day during that time period. Furthermore, she admitted to having been under the influence when visiting the children. In addition, mother said that their landlord had told them to vacate their residence because of "too many disturbances," and mother acknowledged that the police had been coming to the residence, including when the children were present.

During the interview, mother acknowledged the truth of allegation b-1 of the dependency petition, which read: "On October 5, 2012, and October 7, 2012, the children's parents . . . used methamphetamine in the hotel bathroom while the children

. . . were in the bedroom area. Also, on undetermined dates in September 2012, the mother used methamphetamine. Further, on undetermined dates in November 2011, the mother relapsed and used methamphetamine. The mother admitted to 'a couple of relapses here and there' over the past four years." Mother also admitted the truth of allegation b-2 of the dependency petition, which alleged that, while she was using methamphetamine, she breastfed the two youngest children.

The children were placed at the Olive Crest temporary shelter home. Mother called and spoke to the children on about 17 days from October 12 through November 6. Mother and father came for visits, sometimes together and sometimes alone. Altogether, mother saw the children nine times from October 13 to November 4. However, in late October, the case manager at Olive Crest reported that C.D and K.D. would regress and throw tantrums when mother came.

On October 30, mother and father separated.

In an interview on November 8, 2012, mother disclosed "that she had a DUI on October 31, 2012." She also admitted, as stated in allegation b-9 of the petition, that she and father had "an inability to properly parent their children at this time." She stated that their drug habit and failure to take advantage of services offered prevented their proper parenting. Mother also said that there was a restraining order against her on account of her domestic violence against father.

In the initial case plan, the social worker recommended that mother and father each complete a drug treatment program, including drug testing, general counseling with an approved therapist, domestic violence programs, and parenting classes.

In November 2012, father was accepted into the dependency drug court. Mother enrolled in a perinatal program.

Mother tested positive for amphetamine on November 17 and 19 and was expelled from her sober living home around that time. Mother missed her drug test on November 26. She also missed a visit with the children in November.

In a November 27 telephone call with the social worker, mother reported that although she had been referred to an individual counselor, she had been unable to connect up with the counselor. She also said that she had contagious dermatitis, so she could not visit with the children.

The owner of the sober living home mother had been asked to leave reported that he believed her to have been under the influence. Mother was asked to do drug testing but refused, becoming confrontational and throwing her "drug testing urine sample cup around the room." The police were called due to mother's behavior. Another resident at the sober living home confirmed the incident and expressed her own opinion that mother had been high and smelled like alcohol.

On November 28, mother left a voicemail message for the social worker stating, inter alia: "'Um, I'm not interested any longer [in] doing the parent-child interaction, you guys did not let me know that it also entailed counseling . . . .'" She also asked for help finding a different sober living home.

Also on that date, it was reported that the three children were all doing very well at Olive Crest. However, when mother came to visit, their behavior would change—they would tend to throw tantrums and "regress." C.D. and K.D. would cry when their mother or father left.

By November 29, mother had had an initial meeting with her individual counselor. The counselor reported that mother was "'very angry' and 'very volatile' and [could] be both physically and verbally aggressive."

In a November 30 telephone call with the social worker, mother admitted to having relapsed on drugs.

On December 4, mother and father submitted on the dependency petition and the court found the allegations of the petition to be true. It found C.D. came under section 300, subdivision (b), and K.D. and D.D. came under section 300, subdivisions (b) and (j). Mother and father were warned that section 361.5, subdivision (b)(13) might apply as to each of them. The court set a dispositional hearing.

(2) Disposition and section 361.5, subdivision (b)(13) ruling—

Mother thereafter missed a drug test on December 8 and tested positive for amphetamines 10 days later. She had five visits with the children in December. Mother paid attention to the children, but C.D. was sometimes "disengaged" from her. At the same time, the children were happy to see mother, ran to her, and gave her hugs when she left. Mother had four telephone calls with the children in December, expressed her love for them and sang songs to them.

Mother met with her individual counselor again in December 2012. She also started attending 12-step meetings. Mother reported that she had been in another sober living home, but left it because she had been threatened by another resident. In late December mother was accepted into a residential substance abuse treatment program.

On December 20, the children were placed in a foster home. On January 8, 2013, the foster father called the social worker to report that "he was having problems dealing with the children's mother . . . , who was 'being very demanding, threatening, [and] criticizing.'" Mother showed up at the foster parents' church without invitation and failed to make a scheduled visit with the children. The foster father reported that mother had stayed at the new residential substance abuse treatment center for only one week and then left. The foster father also reported the children's father was doing wonderfully with them.

Also on January 8, the social worker spoke with a family counselor who reported that she thought the children would benefit from family therapy but that she had been unable to get mother to schedule an appointment. In addition, mother's individual counselor reported that mother had missed three appointments by then.

The social worker spoke with mother who stated she had been asked to leave the new residential substance abuse treatment center, where she had stayed from about December 26, 2012 to January 4, 2013. Mother said the foster parents had brought the children to the treatment center for visits twice while she was there. The social worker then spoke with the case manager at the treatment center. He said she was discharged due to "'one infraction after another.'" He reported her behavior as "disruptive," "inappropriate," and "disrespectful." In addition, mother was believed to have stolen property from her roommate.

In his January 10 addendum report No. 3, the social worker expressed concern because mother had been asked to leave both the sober living home and the treatment center because of disruptive behavior and alleged theft. In addition, mother had had to disenroll from the perinatal program because of conflicts with other program participants. Furthermore, she had missed three appointments with her individual counselor.

The social worker was concerned that mother's disruptive behavior had a negative impact on her ability to participate in services. He also observed that mother had originally applied for the dependency drug court, but had withdrawn her application. Moreover, mother had tested positive for drugs on three occasions, in November and December, and had suffered a DUI in October. The social worker expressed his "opinion that the mother [had] not complied with treatment and [had] been resistant to treatment and that Family Reunification services should not be offered to the mother, pursuant to Section 361.5(b)(13) of the Welfare and Institutions Code." However, he opined that

father had done well in dependency drug court, had had regular visits with the children, and had a good prognosis for reunification with the children.

At the January 10, 2013 dispositional hearing, the court ordered the children declared dependent children under section 360, subdivision (d). The court approved the case plan, which offered continued services for father. However, it found that, pursuant to section 361.5, subdivision (b)(13), reunification services need not be provided to mother. Mother filed a notice of appeal from the order denying her reunification services.

II

DISCUSSION

A. Welfare and Institutions Code Section 361.5, Subdivision (b)(13)—

Section 361.5, subdivision (b)(13) states that reunification services need not be provided to a parent when the court finds by clear and convincing evidence that the parent "has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

Section 361.5, subdivision (c) requires the court to hold a dispositional hearing in deciding whether to order reunification services. It also provides that "[t]he court shall not order reunification for a parent . . . described in paragraph . . . (13) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child."

B. Mother's Arguments—

Mother argues the court abused its discretion in denying her request for reunification services because it was in the best interests of the children to provide those services. In support of this assertion, she cites only two pages of the record. She cites certain Olive Crest monitored telephone summaries regarding October and November 2012 telephone calls, which show that K.D. cried repeatedly during phone calls with the parents and that C.D. cried occasionally as well.

Mother also cites monitored visitation summaries of visits on October 13 and 15, 2012. She says they show that C.D. and K.D. clung to her, demanded her attention and struggled to say goodbye when visits were over. Although the visitation summaries do report this behavior on two occasions, they also disclose quite a bit more. The summaries stated that in the October 13 visit K.D. "demanded most of [mother's] attention and physically clung to her when she [held] DD. . . . During the visit her behaviors regressed to crying, clinging, bad defiance. CD demonstrated this sporadically." It was reported with respect to the October 15 visit: "[K.D.] continuously asked Mom to be breastfed. Mom told her no . . . . [K.D.] then became aggressive. She hit, bit, slapped, scratched Mom and pulle[d] her hair. [K.D.] slapped Mom across the face two times. . . . When Mom was with any other child, [K.D.] screamed for Mom. . .Both parent[s] struggled with [K.D.] tantruming and being aggressive. Both [C.D.] and [K.D.] struggled with saying goodbye."

A visitation summary of an October 20 visit with mother noted that mother's "presence gets the girls very agitated + angry." When mother tried to get the children to behave, "[t]hey did not listen to her + stuck their tongues out at her, spit + bit her. KD even tried to pinch DD['s] arm while mom was holding her." A visitation summary of an October 22 visit with mother stated that both C.D. and K.D. "acted out &

tantrumed a lot more than usual during the visit." During an October 24 visit with mother, C.D. "laid on the ground whining . . . ."

As the foregoing shows, C.D. and K.D. clearly wanted their mother's attention. At the same time, her presence made them very agitated and angry and caused them to throw tantrums and engage in other unacceptable behaviors. In any event, as we said in *In re William B.* (2008) 163 Cal.App.4th 1220, children's "bonds with the mother cannot be the sole basis for a best interest finding." (*Id.* at p. 1229.)

Mother contends that, despite her history of substance abuse, the court had the authority to order reunification services for her, and should have done so. She emphasizes that although section 361.5 authorizes the court to deny services in specified circumstances, it does not *require* the court to do so. (*In re Albert T.* (2006) 144 Cal.App.4th 207, 218, fn. 5.) But just as the statute does not require the court to deny services, it also does not compel the court to provide them.

"A juvenile court has broad discretion when determining whether further reunification services would be in the best interests of the child under section 361.5, subdivision (c). [Citation.]" (*In re William B.*, *supra*, 163 Cal.App.4th at p. 1229.) A juvenile court order denying reunification services will not be reversed absent a clear abuse of discretion. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523-524; *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.)

Mother reminds us of the goal of keeping families together. She cites *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, in which it was observed: "The Legislature has defined the best interests of children in dependency proceedings along a statutory continuum. Family preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced. [Citation.]" (*Id.* at p. 1787.) "'[T]he primary focus of the trial court must be to *save*

troubled families, not merely to expedite the creation of what it might view as better ones.' [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 98.)

Mother also cites *In re Rebecca H.* (1991) 227 Cal.App.3d 825 for the proposition that reunification services further the state's strong preference for keeping the family intact if at all possible. However, we note the quote in question reads more fully: "[Section 361.5, subdivision] (a)'s explicit direction to furnish reunification services when the minor is removed from the parent's custody implements the law's strong preference for maintaining the family relationship if at all possible. [Citation.] The exceptions to this rule, listed in subdivision (b), are limited in number, narrow in scope, and subject to proof by the enhanced 'clear and convincing' standard." (*In re Rebecca H.*, *supra*, 227 Cal.App.3d at p. 843; accord, *In re Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 474.) The exceptions to the rule "demonstrate a legislative determination that in certain situations, attempts to facilitate reunification do not serve and protect the child's interests." (*In re Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 474.) In the matter before us, it is not the general rule (§ 361.5, subd. (a)), but an exception to the general rule (§ 361.5, subd. (b)(13)), that is at issue.

Mother acknowledges that, as stated in *In re Baby Boy H.*, *supra*, 63 Cal.App.4th 470, "Once it is determined one of the situations outlined in [section 361.5,] subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]" (*In re Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 478; accord, *In re William B.*, *supra*, 163 Cal.App.4th at p. 1227.) "The burden is on the parent to change that assumption and show that reunification would serve the best interests of the child." (*In re William B.*, *supra*, 163 Cal.App.4th at p. 1227.)

Here, mother asserts that there would be no unwise expenditure of government funds in the case before us, because services offered to her would largely

overlap services provided to father. However, she cites no authority in support of this proposition. She does not claim that if one parent attends a program the other parent attends for free. For that matter, she does not suggest that she would even participate in the same programs as father and she does not address the effect of the restraining order against her. In any event, we observe that father has been participating in dependency drug court, but mother withdrew her application to participate in that program. Also, mother failed to schedule family therapy and she does not assert that her individual counseling sessions would include father. In short, her argument concerning overlapping services is not borne out.

In a similar vein, mother contends that if the court had offered her reunification services it would not have added any burden with respect to the children's stability or permanency, inasmuch as the court was ordering reunification services for father and the children were participating in services with him. However, this is only one of several factors to be taken into consideration in determining whether to apply section 361.5, subdivision (b)(13) to deny reunification services to a parent. (*In re William B., supra,* 163 Cal.App.4th at p. 1228.)

"Subdivision (b)(13) of section 361.5 'reflect[s] a legislative determination that an attempt to facilitate reunification between a parent and child generally is not in the minor's best interests when the parent is shown to be a chronic abuser of drugs who has resisted prior treatment for drug abuse.' [Citation.]" (*In re William B., supra,* 163 Cal.App.4th at p. 1228.) "The juvenile court should consider 'a parent's current efforts and fitness as well as the parent's history'; '[t]he gravity of the problem that led to the dependency'; the strength of the bonds between the child and the parent and between the child and the caretaker; and 'the child's need for stability and continuity.' [Citation.]" (*Ibid.*) "Substance abuse is notoriously difficult for a parent to overcome, even when faced with the loss of her children. [Citation.]" (*Ibid.*)

Here, mother contends that she was doing her best to participate in services, was making progress in overcoming her substance abuse problems, and had a strong desire to alter her behavior and reunify with the children. In support of this assertion, she cites portions of the record showing that she tested clean for drugs on two occasions in October 2012, she attended a number of 12-step meetings in fall 2012, she obtained a job in November 2012, she enquired about a parent-child interaction program that same month, she was accepted into the treatment center (from which she was later ejected) in December 2012, and after she had been asked to leave one perinatal program she had enthusiastically gotten a place on a waiting list for another such program.

At the same time, we observe that, even after the children were removed from her custody, mother tested positive for drugs on a number of occasions and admitted to relapses. In addition, she missed some visits with both the children and her individual counselor, was thrown out of multiple programs and residential facilities, withdrew her application for dependency drug court, and informed the social worker that she was no longer interested in a parent-child interaction program. This evidence belies mother's assertion that she was doing her best to participate in services and was making progress in overcoming her substance abuse problems.

The juvenile court found that it was not proven by clear and convincing evidence that reunification with mother was in the best interests of the children. "When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing evidence, the reviewing court must determine if there is any substantial evidence—that is, evidence which is reasonable, credible and of solid value—to support the conclusion of the trier of fact. [Citations.] In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. [Citations.] The reviewing court may not reweigh the

evidence when assessing the sufficiency of the evidence. [Citation.]" (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.)

As the foregoing shows, there was substantial evidence to support the juvenile court's finding, by clear and convincing evidence, that further services would not be in the children's best interests. Accordingly, the court did not abuse its discretion in making its order denying reunification services for mother. (See *In re William B., supra,* 163 Cal.App.4th at p. 1229.)

III

DISPOSITION

The order is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.